

## **December 4, 2014 Minutes**

### **South Dakota Board of Medical & Osteopathic Examiners – Public Board Meeting**

Board Members Present: Kevin Bjordahl, MD; Walter Carlson, MD; David Erickson, MD; Laurie Landeen, MD; Brent Lindbloom, DO; Jeffrey Murray, MD

Board Members Absent: Ms. Deb Bowman; Mary Carpenter, MD

Board Staff Present: Margaret Hansen, PA-C; Mr. Tyler Klatt; Ms. Jane Phalen

Counsel Present: Steven Blair, Board counsel  
William Golden, Staff counsel

Dr. Walter Carlson, Vice President of the Board, called the public meeting to order at 9:00 am. Roll was called, a quorum was established.

A motion to approve the agenda was ratified by the Board (Erickson/unanimous).

A motion to approve the minutes from the September 11, 2014, meeting was ratified by the Board (Lindbloom/unanimous).

A motion to approve the new licenses, permits, registrations and certificates issued since the September 11, 2014, Board meeting was ratified by the Board (Murray/unanimous).

The financial report was presented by Ms. Hansen: 1) monthly reports and statistics; 2) update from the Secretary of Health for the upcoming legislative session; 3) developing educational information for the Board members in the form of “frequently asked questions”. The Board accepted the financial report for information.

Maria Eining, Director of Midwest Health Management Services (MHMS), presented the financial report to the Board. MHMS is the contracted administrating agency for the South Dakota Health Professionals Assistance Program (HPAP). Discussion was held regarding physicians who are experiencing the medical malpractice process, and that HPAP could be a resource for them. Dr. Carlson requested that Ms. Eining appear at the next Board meeting to discuss the steps that are underway in contacting new stakeholders for support of HPAP.

Preliminary discussion was held regarding the possibility of changing the annual renewal of South Dakota medical licenses to a bi-annual basis. It was decided that more information and discussion would be necessary.

Mr. Tyler Klatt presented the reports from recent advisory committee meetings: 1) Athletic Training – undergoing red tape review of statute and rules; 2) Occupational Therapy – discussed guidelines for re-entry to the field of OT; 3) Physical Therapy – working on proposed rules for continuing education requirements and discussion on jurisprudence exam. Mr. Klatt presented some draft language and explained that this was in the preliminary stage; 4) Respiratory Care – auditing for continuing education. A motion to approve the reports was ratified by the Board (Bjordahl/unanimous).

Mr. Klatt explained that at the Board directed him to re-write proposed ethics rules for Genetic Counselors, Licensed Nutritionists/Dietitians, and Occupational Therapists. Mr. Klatt presented the revised rules. A motion to approve the revised ethics rules and proceed to public hearing for Genetic

Counselors, Licensed Nutritionists/Dietitians and Occupational Therapists was ratified by the Board (Landeen/unanimous).

At the last Board meeting Dr. Carpenter brought the 1994 Declaratory Ruling for Universal Precautions to the attention of the Board. This declaratory ruling appears in the administrative rules for all professions regulated by the Board. The staff was directed to research the history of this ruling and report to the Board. Mr. Klatt reported that the Department of Health vacated the declaratory ruling on universal precautions in 2004. He then presented the staff's recommendation to petition the Board to vacate the universal precautions rule at the March 2015 meeting.

Mr. Klatt presented the proposed rule ARSD 20:47:07: Physician Best Practices. A motion to approve ARSD 20:47:07, and authorize the staff to proceed to public hearing was ratified by the Board (Murray/unanimous).

Mr. Klatt presented the proposed rule ARSD 20:78:05: Board Member Conflict of Interest. A motion to approved ARSD 20:78:05 and authorize the staff to proceed to public hearing was ratified by the Board (Lindbloom/unanimous).

Ms. Hansen presented the executive director report on the following topics: 1) Monthly statistical reports; 2) The article on the Health Professionals Assistance Program (HPAP) in South Dakota Medicine; 3) Rules, guidelines and updates for the coming legislative session.

Dr. Carlson requested that the staff prepare information in the form of "Frequently Asked Questions" for review at Board meetings.

**Public Hearings: Board members assigned to a case do not deliberate or vote in that case (ARSD 27:78:05:05)**

In August, 2014, Jessica A. Thurman, PA, who was represented by counsel David Kroon, agreed to sign a Consent Agreement with Reprimand. At the September 11, 2014 Board meeting, she appeared with her attorney to ask that the reprimand she agreed to be amended to a letter of concern. The parties were unable to stipulate to the facts; therefore, the Board continued the case to December 4, 2014, and asked the parties to reach an agreement if possible. No agreement or stipulation to the facts was reached. Ms. Thurman and her attorney appeared at this Board meeting. A motion to enter into executive session at 11:15 am pursuant to SDCL 1-25-2 (2) & (3) was ratified by the Board (Landeen/unanimous). The public meeting resumed at 11:23 am. The Board directed the parties to come to an agreement or proceed to contested case hearing before an administrative law judge. The parties agreed to amend the Consent Agreement with Reprimand to a Consent Agreement with a Letter of Concern which is a public Board action and reported to the national practitioner data bank and other entities to which the board is required to report licensure action. A motion to approve the amended agreement was ratified by the Board (Landeen/unanimous). The assigned Board member, Dr. Carlson, did not participate in the deliberation or vote. Dr. Bjordahl addressed the Board members and directed that his statements be entered into the record. He expressed his concern about the evidentiary issues in this case. He recommended that in the future, contested cases be conducted first in the presence of an administrative judge who could examine the evidence, and then prepare findings of fact and conclusions of law based upon the evidence for final consideration by the Board. He further recommended that if a party entered into an agreement and then wanted to change the terms of the agreement that the matter must first go to a contested case hearing in the presence of an administrative judge.

**ARSD 20:78:03:07. Application withdrawn during investigation. An applicant may withdraw an application after an investigation has been initiated by the executive secretary. An application**

***withdrawn after investigation has been initiated shall be reported as "withdrawn under investigation" in the board's permanent license files and in any national databases to which the board is required to report licensure action.***

Paramedic Elizabeth M. Daggett appeared at the meeting. While she was under investigation, she chose not to submit a renewal application for her paramedic license. Her license was suspended by statute due to non-renewal on July 15, 2014. A motion to approve the Withdrawal under Investigation was ratified by the Board (Erickson/unanimous).

A motion to entered into executive session at 12:40 pursuant to SDCL 1-25-2(3) was ratified by the Board (Murray/unanimous).

The public meeting resumed at 1:00.

**Confidential Physician Hearings (Closed Session pursuant to SDCL 36-4-31.5 unless privilege is waived by physician): Board members assigned to a case do not deliberate or vote in that case (ARSD 27:78:05:05)**

The physicians did not waive privilege so the Board entered a closed session pursuant to SDCL 36-4-31.5 *Evidence in cancellation, revocation, suspension, or limitation proceedings confidential. Testimony of a witness or documentary evidence of any kind on cancellation, revocation, suspension, or limitation proceedings are not subject to discovery or disclosure under chapter 15-6 or any other provision of law, and are not admissible as evidence in any action of any kind in any court or arbitration forum, except as hereinafter provided. No person in attendance at any hearing of the Board of Examiners considering cancellation, revocation, suspension, or limitation of a license, resident license, or certificate issued by it may be required to testify as to what transpired at such meeting. The prohibition relating to discovery of evidence does not apply to deny a physician access to or use of information upon which a decision regarding the physician's staff privileges was based. The prohibition relating to discovery of evidence does not apply to any person or the person's counsel in the defense of an action against the person's access to the materials covered under this section. Source: SL 1985, ch 297, § 21; SL 2009, ch 178, § 13; SL 2013, ch 172, § 14.*

In the matter of applicant Dr. Kerry A. Blackham, a motion to amend the Findings of Fact and Conclusions of Law to mirror the restrictions imposed on his medical license in Utah, and issue a restricted South Dakota medical license with Dr. Blackham's agreement to participate in SD HPAP and comply with all Utah requirements was ratified by the Board (Landeem/unanimous). All primary source verifications must first be received and be satisfactory before issuance of the South Dakota medical license. The assigned Board member, Ms. Bowman, was absent from this Board meeting.

In the matter of Dr. Winn Harrison Gregory, a motion to approve the Stipulation and Agreement which mirrors the conditions imposed by the Oregon Board of Medicine was ratified by the Board (Erickson/unanimous). The assigned Board member, Ms. Bowman, was absent from this Board meeting.

In the matter of Dr. Scharazard Gray, a motion to approve the Stipulation and Agreement to mirror the conditions imposed by the North Dakota Board of Medicine was ratified by the Board (Carlson/unanimous). The assigned Board member, Ms. Bowman, was absent from this Board meeting.

In the matter of Dr. Roger Carter, a motion to accept the Voluntary Surrender of his South Dakota medical License # 1729 was ratified by the Board (Bjordahl/unanimous). The assigned Board member, Dr. Landeen, did not participate in the deliberation or vote.

The Board reviewed the complaint and investigation docket and the competency docket for information purposes.

Discussion was held regarding the next Board meeting; to change from the scheduled two days to one day and have that one day meeting longer if necessary. A motion to change the scheduled two (2) day March Board meeting to a one (1) day Board meeting on Wednesday, March 11, 2015, was ratified by the Board (Landeem/unanimous).

There being no further business, the meeting adjourned at 3:10 pm.